

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 11, 2006

In Reply Refer To:
Midwest Independent Transmission System
Operator, Inc.
Docket No. ER04-691-076

Midwest Independent Transmission System Operator, Inc.
701 City Center Drive
Carmel, IN 46032

Attention: Lori A. Spence
Stephen G. Kozey

Reference: Proposed revisions to the Midwest Independent Transmission System
Operator, Inc. Open Access Transmission and Energy Markets Tariff

Dear Ms. Spence:

1. On June 15, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission and Energy Markets Tariff (Tariff or TEMT)¹ that clarify the authority of the Midwest ISO to disclose certain reliability-related confidential Market Participant data to Balancing Authorities and Transmission Operators subject to the Midwest ISO making a further compliance filing that specifies the effective date. In this order we conditionally accept the proposed changes to ensure that the Balancing Authorities have necessary information to effectively carry out their reliability-related responsibilities subject to the Midwest ISO submitting tariff sheets with effective dates and certifying that the Balancing Authorities and Transmission Operators have signed Attachment Z of the TEMT in a future compliance filing.

¹ FERC Electric Tariff, Third Revised Volume No. 1.

2. The Midwest ISO addressed the allocation of responsibilities and functions among itself and the various Balancing Authorities in its region in a Balancing Authority Settlement approved by the Commission.² Under the Balancing Authority Settlement, the Balancing Authorities are charged with reliability-related operations that require the Midwest ISO to provide the Balancing Authorities with access to certain confidential Market Participant data.³ Accordingly, on March 11, 2005, the Balancing Authorities, through the Midwest ISO's Control Area Working Group (CAWG), requested that the Midwest ISO provide such data to Balancing Authorities and Transmission Operators on an hourly basis. At the Midwest ISO's suggestion, the CAWG presented the Balancing Authorities' data request to the Market Subcommittee and the Advisory Committee, neither of which opposed the data request.

3. To clarify the authority of the Midwest ISO to disclose certain specific confidential Market Participant data to Balancing Authorities and Transmission Operators, the Midwest ISO submitted the instant filing proposing revisions to section 38.9.1 of the Midwest ISO's TEMT to add a subsection (A) (Disclosure of Certain Confidential Market Participant Data to Balancing Authorities and Transmission Operators).⁴ The proposed TEMT revisions would also require each recipient Balancing Authority and Transmission Operator to execute Attachment Z (Non-Disclosure and Confidentiality Agreement) of the TEMT.

4. Because the data needs to be disclosed on an hourly and continuing basis, says the Midwest ISO, it would be unrealistic and unwieldy to include a notice requirement similar to that of section 38.9.1.b of the TEMT, under which disclosures to NERC and Regional Reliability Councils are required to be preceded by five (5) business days' notice to Market Participants. Thus, the proposed revisions to the TEMT do not impose such a notice requirement prior to disclosure of the confidential Market Participant data to the Balancing Authorities and Transmission Operators.

²*Midwest Independent Transmission System Operator, Inc., et al.*, 110 FERC ¶ 61,177 (2005) (February 18 Order), *clarification granted*, 111 FERC ¶ 61,367 (2005).

³ Midwest ISO states that under the NERC Functional Model, Balancing Authorities have a number of reliability-related responsibilities including but not limited to: (1) implementation, approval and confirmation of scheduled interchange for dynamic schedules; (2) collection, calculation and verification of actual interchange values for each interconnection, and provision of hourly data to the Midwest ISO; (3) retention of pre-EMT inadvertent interchange accounts and implementation of inadvertent energy payback procedures; and (4) Area Control Error (ACE), frequency bias value and time error corrections.

⁴ Data proposed to be provided by the Midwest ISO to the Balancing Authorities includes, among other things, economic minimums and economic maximums, emergency minimums and emergency maximums, and ramp rates.

5. Notice of Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 38,392 (2006), with interventions and protests due on or before July 6, 2006. The Midwest Transmission Dependent Utilities⁵ (Midwest TDUs) filed a timely motion to intervene. Wisconsin Electric Power Company filed comments in support of the Midwest ISO's proposal.⁶

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. We will conditionally accept proposed section 38.9.1(A) of the Tariff for the purpose of clarifying the Midwest ISO's authority to disclose certain reliability-related confidential Market Participant data to Balancing Authorities and Transmission Operators subject to Midwest ISO submitting a compliance filing providing updated tariff sheets that indicate the final effective date and certifying that recipient Balancing Authorities and Transmission Operators have executed Attachment Z of the TEMT. We find that the proposed language concerning the disclosure of certain confidential information is consistent with the obligations set forth in the Balancing Authority Settlement as discussed above.

8. We agree with the Midwest ISO's assertion, as discussed above, that the notification requirements elsewhere in section 38.9.1 are unrealistic and unworkable for proposed section 38.9.1(A). Accordingly, this letter order serves as notice to all impacted parties that the Commission is going to allow the Midwest ISO to provide confidential, reliability-related, Market Participant data to Balancing Authorities and Transmission Operators on a hourly basis as proposed in section 38.9.1(A) as soon as the Midwest ISO informs the Commission that it is ready to proceed.

⁵ The Midwest Transmission Dependent Utilities for the purpose of this docket include: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas & Electric, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.

⁶ Wisconsin Electric Power Company is already a party to this proceeding by virtue of having been granted intervention in Docket No. ER04-691-000. *See Midwest Independent Transmission System Operator, Inc. and Public Utilities With Grandfathered Agreements in the Midwest ISO Region*, 107 FERC ¶ 61,191 (2004).

9. With regard to transfer of confidential and sensitive data, we remind all parties that all public utility Balancing Authorities remain bound by the Standards of Conduct's prohibition against the Balancing Authorities sharing transmission or customer information with energy or marketing personnel.⁷

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: Mr. Richard Drom
Mr. Michael Kessler
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⁷ See *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,174 (2006) at P63, *reh'g pending*. The Standards of Conduct only apply to public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce and interstate natural gas pipelines that transport gas for others; they do not apply to Balancing Authorities that are not public utilities. See 18 C.F.R. § 358.3(a).